PUBLIC SAFETY AND LAW ENFORCEMENT STANDING COMMITTEE

SUBCOMMITTEE TO EVALUATE DUTIES OF COMMERCIAL VEHICLE ENFORCEMENT OFFICERS

December 15, 2000

Public Safety and Law Enforcement Standing Committee

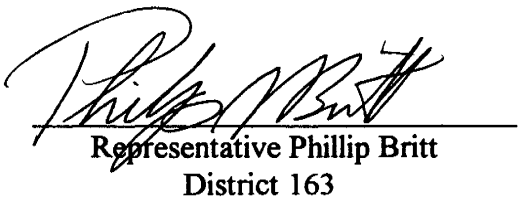
Subcommittee to Evaluate Duties of Commercial Vehicle Enforcement Officers

2000

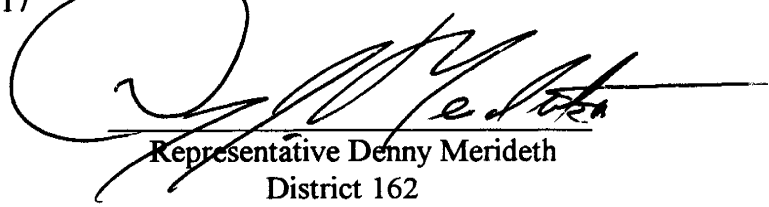
Representative Don Kissell - Chair
Representative Phillip Britt
Representative Denny Merideth
Representative Sam Gaskill
Representative Carson Ross

Prepared by: Sarah G. Madden, House Research

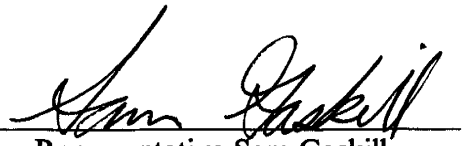
Representative Don Kissell - Chair
District 17



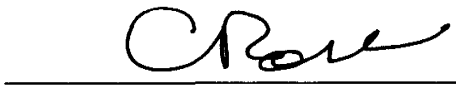
Representative Phillip Britt
District 163



Representative Denny Merideth
District 162



Representative Sam Gaskill
District 131



Representative Carson Ross
District 55

INDEX

Introduction 1

Summary of Issues Based on Testimony Heard and Reviewed 2

Subcommittee Recommendations 4

Appendix A - Hearing Witnesses 6

Appendix B - Section 304.230 RSMo 1999 7

Appendix C - Comment from Missouri Department of Public Safety 8

INTRODUCTION

A subcommittee of the Public Safety and Law Enforcement Standing Committee was formed at the authorization of House Speaker Steve Gaw to evaluate the duties of commercial vehicle enforcement officers (CVOs) and make recommendations for any necessary changes to those duties. House members assigned to the subcommittee were Representatives Don Kissell (chair); Phillip Britt; Sam Gaskill; Denny Merideth; and Carson Ross.

The subcommittee met once to hear testimony on September 29, 2000, in Jefferson City. Appearing as witnesses were a number of local and out-of-state public safety officers and officials.

As its underlying mission, the subcommittee points to the issue of highway safety. The subcommittee recognizes that CVOs are in a unique position to make not only commercial trucking, but general highway traffic safer with enforcement of the state's motor vehicle and criminal laws. Because the volume of all types of traffic has been steadily increasing on the state's highways, a greater presence of safety officers is becoming a necessary goal.

Despite public perception that CVOs perform the same functions and duties as highway patrol officers, state statute restricts these responsibilities to enforcement of laws concerning commercial vehicles with traffic tickets, inspections, arrests and warrants. It is the subcommittee's opinion that by expanding the powers granted to CVOs, state and highway drivers will receive better protection, and the use of taxpayer dollars will be maximized.

Further, the current reporting, licensing and registration process for Missouri's commercial vehicle industry is a source of much paperwork and some amount of confusion. The adaptation of new technologies and consolidation of these various components into an "intelligent" transportation system would streamline the process and better serve commercial drivers.

The subcommittee strongly urges both parties of the House of Representatives to take into considerations its recommendations to reevaluate CVO duties and the commercial vehicle system in Missouri. By doing so, improvement in highway safety and use satisfaction are goals that can be more fully realized.

SUMMARY OF ISSUES BASED ON TESTIMONY HEARD AND REVIEWED

ISSUES

1. Current System of Regulation for Commercial Vehicles in Missouri

Because of the central location of the state of Missouri, with highways leading to every corner of the United States, countless numbers of commercial vehicles utilize these roadways. The state departments involved in the task of licensing, reporting and regulating these commercial vehicles are many: the Departments of Revenue, Transportation, Economic Development and Public Safety. To coordinate these efforts is a vast undertaking.

The key element in the supervision of commercial vehicles is the commercial vehicle enforcement division of the state highway patrol. Section 304.230 RSMo 1999 sets out the powers and limitations on commercial vehicle enforcement officers (CVOs), as well as general qualifications. CVOs must have "successfully completed training approved by the superintendent of the Missouri state highway patrol," which includes some basic law enforcement training and specific emphasis on the regulations concerning commercial vehicles. This training is of a different type than that required for POST certification. CVOs are permitted to bear firearms, and may perform the same duties as regular law enforcement agents, but only with respect to commercial vehicles. Thus, a CVO may issue tickets, and make stops, inspections and arrests for lack of compliance with commercial vehicle laws, rules and regulations.

However, as the number of commercial vehicles using Missouri highways increases, CVOs have become frustrated by their limited powers. General search and seizure is not permitted, and CVOs cannot make arrests if their vehicle inspections yield controlled substances or handguns. Likewise, drivers who are found to have warrants for non-commercial vehicle violations must be held until a highway patrol officer is available to make the arrest. CVOs maintain that because the highway patrol is often short-handed, time, effort and opportunities for better law enforcement would be maximized with an expansion of their powers.

2. CVO Reform

The state of Tennessee has had a great deal of success in making changes to its CVO division. There, all functions relating to commercial vehicles have been transferred to the Department of Public Safety, and CVOs are fully commissioned officers of the highway patrol. As a result, Tennessee CVOs are empowered to enforce all traffic laws, but must maintain an emphasis on commercial vehicles. Due to increased enforcement, the number of fatal crashes involving commercial vehicles has dropped approximately sixty percent.

In Missouri, CVOs have already seen changes in their duties and responsibilities. With the advent of drug interdiction programs and increased prosecution of intoxication-related offenses, CVOs have contributed to law enforcement beyond the range of their original statutory duties for some time. Witnesses before the committee generally agreed to the necessity in maintaining a separate commercial vehicle enforcement division; however, witnesses also expressed an interest in a limited modification of CVO duties. To expand the powers of Missouri CVOs, more training and funding would be necessary. More importantly, a decision as to what those new powers would be and when they could be exercised, would have to be made. In Tennessee, CVOs are full time law enforcement officers who may make arrests for any violation, at any time. Alternatively, the approach taken could limit CVOs to enforcement of all traffic and criminal laws in the event CVOs' actions stem from the enforcement of his or her original duties.

3. Division Commercial Vehicle Enforcement Reform

While the commercial vehicle industry may be best served by making changes to the duties delegated to CVOs, the time may also be ripe for changes in the manner by which commercial vehicles are regulated in Missouri. Although the amount of information that must be gathered, processed and integrated for the administration of the commercial vehicle industry is staggering, new technologies and methods of organization would be very effective ways to speed up the process and cut overall cost.

An "intelligent" transportation system implements new technology, fosters better communication among departments and centralizes data for easier access. The development of "smart trucks" allows for communication between commercial vehicles and weigh stations with computer chips, saving time and money. Consolidating the licensing, registration and reporting systems into a "one-stop shop" provides better customer service and organization of resources. Further, making all of the information available on a centralized database allows for easier access and communication with other states.

Making Missouri's highways safer for all drivers requires an enforcement team with the proper tools to work effectively as well as an organized regulatory scheme. Reforming the commercial vehicle enforcement system would not only better serve commercial vehicle operators but would improve the availability of information and keep the system running smoothly.

RECOMMENDATIONS

1. Expand Duties of Commercial Vehicle Enforcement Officers

After working with the Department of Public Safety to develop a new set of training requirements, legislation should be passed to expand the scope of duties for CVOs. The expansion may be limited to allow CVOs to only exercise their broader powers if the incident arises out of the enforcement of commercial vehicle laws, rules and regulations.

2. Develop an "Intelligent" Commercial Vehicle Enforcement System

The Department of Public Safety should consider new technologies, the consolidation of paperwork and the centralization of data to more effectively govern the commercial vehicle industry in Missouri.

3. Mandate that the Director of the Commercial Vehicle Enforcement Division Be a Commercial Vehicle Enforcement Officer

Currently, the director of the Commercial Vehicle Enforcement Division is a highway patrol member. Requiring that the director be a CVO ensures that the supervisor has the training and experience necessary to more effectively manage the division.

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2. Develop an "Intelligent" Commercial Vehicle Enforcement System

The Department of Public Safety should consider new technologies, the consolidation of paperwork and the centralization of data to more effectively govern the commercial vehicle industry in Missouri.

3. Mandate that the Director of the Commercial Vehicle Enforcement Division Be a Former Commercial Vehicle Enforcement Officer

Currently, the director of the Commercial Vehicle Enforcement Division is a highway patrol member. Requiring that the director be a former CVO ensures that the supervisor has the training and experience necessary to more effectively manage the division.

APPENDIX

A. WITNESSES

September 29, 2000

Major Burton (Butch) Lawson
Tennessee Department of Safety

Rick Moore
Missouri Department of Revenue
Highway Reciprocity Commission

James L. Dalton
Retired Missouri Commercial Vehicle Enforcement Officer

Scott Suling
Missouri Commercial Vehicle Enforcement Officer Supervisor I

Fred Perkins
Missouri Commercial Vehicle Enforcement Officer

Art Cullifer
Retired Missouri Commercial Vehicle Enforcement Officer

William E. Hampton
Consultant for Commercial Vehicle Industry

Colonel Weldon Wilhoit
Missouri Highway Patrol Superintendent

B. SECTION 304.230 RSMo 1999

Missouri Revised Statutes

Chapter 304
Traffic Regulations
Section *304.230*

August 28, 2000

Enforcement of load laws--commercial vehicle inspectors, powers.

304.230. 1. It shall be the duty of the sheriff of each county or city to see that the provisions of sections 304.170 to 304.230 are enforced, and any peace officer or police officer of any county or city or any highway patrol officer shall have the power to arrest on sight or upon a warrant any person found violating or having violated the provisions of such sections.

2. The sheriff or any peace officer or any highway patrol officer is hereby given the power to stop any such conveyance or vehicle as above described upon the public highway for the purpose of determining whether such vehicle is loaded in excess of the provisions of sections 304.170 to 304.230, and if he or she finds such vehicle loaded in violation of the provisions thereof he or she shall have a right at that time and place to cause the excess load to be removed from such vehicle; and provided further, that any regularly employed maintenance man of the department of transportation shall have the right and authority in any part of this state to stop any such conveyance or vehicle upon the public highway for the purpose of determining whether such vehicle is loaded in excess of the provisions of sections 304.170 to 304.230, and if he or she finds such vehicle loaded in violation of the provisions thereof, he or she shall have the right at that time and place to cause the excess load to be removed from such vehicle. When only an axle or a tandem axle group of a vehicle is overloaded, the operator shall be permitted to shift the load, if this will not overload some other axle or axles, without being charged with a violation; provided, however, the privilege of shifting the weight without being charged with a violation shall not extend to or include vehicles while traveling on the federal interstate system of highways. When only an axle or tandem axle group of the vehicle traveling on the federal interstate system of highways is overloaded and a court authorized to enforce the provisions of sections 304.170 to 304.230 finds that the overloading was due to the inadvertent shifting of the load changing axle weights in transit through no fault of the operator of the vehicle and that the load thereafter had been shifted so that no axle had been overloaded, then the court may find that no violation has been committed. The operator of any vehicle shall be permitted to back up and reweigh, or to turn around and weigh from the opposite direction. Any operator whose vehicle is weighed and found to be within five percent of any legal limit may request and receive a weight ticket, memorandum or statement showing the weight or weights on each axle or any combinations of axles. Once a vehicle is found to be within the limits of section 304.180 after having been weighed on any state scale and there is no evidence that any cargo or fuel has been added, no violation shall occur, but a presumption shall exist that cargo or fuel has been added if upon reweighing on another state scale the total gross weight exceeds the applicable limits of section 304.180 or 304.190. The highways and transportation commission of this state may deputize and appoint any number of their regularly employed maintenance men to enforce the provisions of such sections, and the maintenance men delegated and appointed in this section shall report to the proper officers any violations of sections 304.170 to 304.230 for prosecution by such proper officers.

3. The superintendent of the Missouri state highway patrol may assign qualified persons who are not

highway patrol officers to supervise or operate permanent or portable weigh stations used in the enforcement of commercial vehicle laws. These persons shall be designated as commercial vehicle inspectors and have limited police powers:

(1) To issue uniform traffic tickets at a permanent or portable weigh station for violations of rules and regulations of the division of motor carrier and railroad safety of the department of economic development and department of public safety, and laws, rules, and regulations pertaining to commercial motor vehicles and trailers and related to size, weight, fuel tax, registration, equipment, driver requirements, transportation of hazardous materials and operators' or chauffeurs' licenses, and the provisions of sections 303.024 and 303.025, RSMo;

(2) To require the operator of any commercial vehicle to stop and submit to a vehicle and driver inspection to determine compliance with commercial vehicle laws, rules, and regulations, the provisions of sections 303.024 and 303.025, RSMo, and to submit to a cargo inspection when reasonable grounds exist to cause belief that a vehicle is transporting hazardous materials as defined by Title 49 of the Code of Federal Regulations;

(3) To make arrests for violation of subdivisions (1) and (2) of this subsection. Commercial vehicle inspectors shall not have the authority to exercise the powers granted in subdivisions (1), (2) and (3) of this subsection until they have successfully completed training approved by the superintendent of the Missouri state highway patrol; nor shall they have the right as peace officers to bear arms.

4. The superintendent of the Missouri state highway patrol may appoint qualified persons, who are not members of the highway patrol, designated as commercial vehicle enforcement officers, with the powers:

(1) To issue uniform traffic tickets for violations of laws, rules and regulations pertaining to commercial vehicles, trailers, special mobile equipment and drivers of such vehicles, and the provisions of sections 303.024 and 303.025, RSMo;

(2) To require the operator of any commercial vehicle to stop and submit to a vehicle and driver inspection to determine compliance with commercial vehicle laws, rules, and regulations, compliance with the provisions of sections 303.024 and 303.025, RSMo, and to submit to a cargo inspection when reasonable grounds exist to cause belief that a vehicle is transporting hazardous materials as defined by Title 49 of the Code of Federal Regulations;

(3) To make arrests upon warrants and for violations of subdivisions (1) and (2) of this subsection. Commercial vehicle enforcement officers shall not have the authority to exercise the powers granted in subdivisions (1), (2) and (3) of this subsection until they have successfully completed training approved by the superintendent of the Missouri state highway patrol. Commercial vehicle enforcement officers shall have the right as peace officers to bear arms.

5. Any additional employees needed for the implementation of this section shall be hired in conformity with the provisions of the federal fair employment and antidiscrimination acts.

6. Any part of this section which shall be construed to be in conflict with the axle or tandem axle load limits permitted by the Federal-Aid Highway Act, Section 127 of Title 23 of the United States Code (Public Law 85-767, 85th Congress) shall be null, void and of no effect.

(RSMo 1939 § 8408, A.L. 1963 p. 422, A.L. 1965 p. 492, A.L. 1979 H.B. 454, A.L. 1985 H.B. 157 merged with H.B. 368, A.L. 1994 S.B. 475, A.L. 1998 H.B. 1802)

Prior revision: 1929 § 7790

(1994) Search of commercial motor vehicle pursuant to section was objectively authorized and legally permitted as state had legitimate governmental interest in stopping, weighing and inspecting vehicles for safety of persons traveling on state's highways and did not violate Fourth Amendment of the United States Constitution prohibiting unreasonable search and seizures. State v. Rodriguez, 877 S.W.2d 106 (Mo. banc).

(1996) Commercial vehicle inspector's ticketing powers are limited to weigh stations, which must be stationary. State v. Ruch, 926 S.W.2d 937 (Mo.App. W.D.).

C. COMMENT FROM MISSOURI DEPARTMENT OF PUBLIC SAFETY

ROGER B. WILSON
Governor

GARY B. KEMPKER
Director

STATE OF MISSOURI
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE DIRECTOR

Truman Building, Room 870
Mailing Address: P.O. Box 749
Jefferson City, MO 65102-0749
Telephone: 573-751-4905
FAX: 573-751-5399
Toll Free: 888-FYI-MDPS
Internet Address:
http://www.dps.state.mo.us/

December 7, 2000

The Honorable Don R. Kissell
Missouri State Representative
Missouri State Capitol – Room 408-B
Jefferson City, Missouri 65101

Dear Representative Kissell:

I received your letter dated November 1, 2000 regarding the subcommittee review of the duties and authority of commercial vehicle operators. We will try to respond to the questions you raise in your letter.

At the present time the Peace Officer Standards & Training Commission awards certification to peace officers at various levels. The minimum state certification level at the current time is 470 hours. This level of training required of Missouri peace officers in jurisdictions throughout the state of Missouri with the exception of first class counties with a charter form of government. In those areas, a minimum of 600 hours of certification is required. Statutes also provide exceptions, for example, the Missouri State Highway Patrol is required to be trained at a level of not less that 1000 hours of Missouri POST certified training.

It is my belief that if the subcommittee should recommend the expansion of the commercial vehicle officer search, seizure and arrest powers, these officers would have to be provided with a minimum of 470 hours of training to operate as peace officers in that capacity. As I am sure you are aware, there are other state law enforcement officers, such as the Water Patrol, Fire Safety and others that have certain limitations on their authority. Limitation can be accomplished by statutory provision; however, it is my belief that the state training requirements would have to be adhered to unless otherwise specified by statute.

The Missouri State Highway Patrol presently employs about 165 employers as commercial vehicle officers. These employees were specifically hired and trained to enforce laws relating to commercial motor vehicle registration, permits, weights and dimension. The commercial vehicle officers are armed for their own protection while performing these duties. Occasionally in the course of their duties they discover circumstances that indicate criminal activity. Their training provides that they are to contact a Missouri State Highway Patrol officer or any other law enforcement officer with the authority to act in that given situation.

At the present time arrests made for commercial vehicle violations are transported when necessary by uniform members of the Missouri State Highway Patrol.

With respect to commercial vehicle highway safety issues in general, the Missouri State Highway Patrol is working with the Missouri Department of Transportation to implement technology at the Joplin, Missouri weigh station on Interstate 44 which would allow weighing of trucks in motion and the capacity to check credentials by electronic scanners. When operational, this system should provide a safer environment in the area of weigh stations and allow for a smoother traffic flow.

We look forward to continued success with commercial vehicle enforcement in the state. I would be most happy to meet personally with you or members of the subcommittee on this issue should you desire further clarification or additional information.

Sincerely,

Gary B. Kempker
Director

GBK/jm